

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF NEW YORK**

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BRENDA U.,

Plaintiff,

v.

1:18-CV-918  
(DJS)

ANDREW SAUL, Commissioner of Social  
Security,

Defendant.

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**APPEARANCES:**

KIRK AND TEFF, LLP  
Counsel for Plaintiff  
10 Westbrook Lane  
P.O. Box 4466  
Kingston, New York 12402

**OF COUNSEL:**

RALPH M. KIRK, ESQ.  
DREW CHISOLM, ESQ.

U.S. SOCIAL SECURITY ADMIN.  
OFFICE OF REG'L GEN. COUNSEL  
REGION II  
Counsel for Defendant  
26 Federal Plaza - Room 3904  
New York, NY 10278

MICHELLE L. CHRIST, ESQ.

**DANIEL J. STEWART**  
**United States Magistrate Judge**

**ORDER**<sup>1</sup>

Plaintiff Brenda U., brought this action pursuant to 42 U.S.C. § 405(g) seeking review of a decision by the Commissioner of Social Security that Plaintiff was not disabled. Dkt. No. 1. Currently before the Court is the Plaintiff's Motion for the Judgment on the Pleadings and the Commissioner of Social Security's Motion for Judgment on the Pleadings. Dkt. Nos. 10 & 14. Oral argument was heard on the Motions on September 25, 2019 during an on the record telephone conference. Following argument, I issued a bench decision in which, after applying the governing legal standards, I found the Commissioner's determination failed to provide a sufficient explanation for its consideration of medical opinions in the record.

After due deliberation and based upon the Court's bench decision, which has been transcribed, is attached to this order, and is incorporated by reference herein, it is hereby

**ORDERED**, that Plaintiff's Motion for Judgment on the Pleadings is **GRANTED**; and it is further

**ORDERED**, that Defendant's Motion for Judgment on the Pleadings is **DENIED**; and it is further

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<sup>1</sup> Upon Plaintiff's consent, the United States' general consent, and in accordance with this District's General Order 18, this matter has been referred to the undersigned to exercise full jurisdiction pursuant to 28 U.S.C. § 636(c) and Federal Rule of Civil Procedure 73. *See* Dkt. No. 7 & General Order 18.

**ORDERED**, that Defendant's decision denying Plaintiff disability benefits is **VACATED** and **REMANDED** pursuant to Sentence Four of section 405(g) for further proceedings; and it is further

**ORDERED**, that the Clerk of the Court shall serve copies of this Order on the parties.

Dated: September 25, 2019  
Albany, New York



Daniel J. Stewart  
U.S. Magistrate Judge

1 UNITED STATES DISTRICT COURT  
2 NORTHERN DISTRICT OF NEW YORK  
3

4 BRENDA U., )  
5 Plaintiff, ) CASE NO. 1:18-CV-918  
6 vs. )  
7 COMMISSIONER OF SOCIAL SECURITY, )  
8 Defendant. )  
9

10 TRANSCRIPT OF PROCEEDINGS  
11 BEFORE THE HON. DANIEL J. STEWART  
12 WEDNESDAY, SEPTEMBER 25, 2019  
13 ALBANY, NEW YORK

13 FOR THE PLAINTIFF:

14 Kirk & Teff, LLP  
15 By: Drew Chisholm, Esq.  
16 10 Westbrook Lane, PO Box 4466  
17 Kingston, New York 12402

17 FOR THE DEFENDANT:

18 Social Security Administration  
19 By: Michelle L. Christ, Esq.  
20 26 Federal Plaza, Room 3904  
21 New York, New York 10278  
22  
23

24 THERESA J. CASAL, RPR, CRR, CSR  
25 Federal Official Court Reporter  
445 Broadway, Room 509  
Albany, New York 12207

THERESA J. CASAL, RPR, CRR  
UNITED STATES DISTRICT COURT - NDNY

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1           THE COURT: At this point in time, I am prepared  
2 to render a decision on this matter, so from this point  
3 forward, the transcript will be the decision and the  
4 decision is as follows:

5           This is an action pursuant to 42, United States  
6 Code, Section 405(g), seeking judicial review of an adverse  
7 determination of the Social Security Administration. Having  
8 reviewed the record and the briefs filed by the parties and  
9 hearing the arguments of Counsel this morning, I'm prepared  
10 to issue a ruling on the pending motions for judgment on the  
11 pleadings.

12           Plaintiff initially filed for supplemental  
13 security income benefits in February of 2015. Her claim was  
14 denied and she then requested and had a hearing before the  
15 Administrative Law Judge. The ALJ issued a decision on  
16 July 3, 2017, finding that plaintiff was not disabled within  
17 the meaning of the Social Security Act and thus not entitled  
18 to benefits. The Social Security Appeals Council denied  
19 review, making the ALJ's decision the final decision of the  
20 defendant. It is that decision the plaintiff seeks to  
21 review in this action.

22           Plaintiff was born in 1966. She alleges a  
23 disability onset date of June 10, 2005. She claimed  
24 disability based upon a number of conditions, including  
25 degenerative joint disease, arthritis, bone disease and

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1 chronic obstructive pulmonary disease or COPD. She has past  
2 relevant work as a cashier and cleaner. She has an  
3 established history of drug addiction.

4           The ALJ's decision applied the established  
5 sequential analysis for evaluating claims of this nature.  
6 In his decision, the ALJ found the plaintiff had the  
7 following severe impairments: Degenerative disc disease of  
8 the cervical spine, lumbar disc bulges and COPD. The ALJ  
9 next found that plaintiff did not have an impairment or  
10 combination of impairments that met or medically equals one  
11 of the listed impairments in the Social Security  
12 Administration's regulations. The ALJ then found that  
13 plaintiff had the residual functional capacity to perform a  
14 full range of light work, except that she could not work at  
15 jobs with a concentrated exposure to airborne irritants.  
16 The ALJ found that plaintiff could perform her past relevant  
17 work and that there were other jobs that she could perform  
18 consistent with her functional capacity. As a result, the  
19 ALJ found that plaintiff was not disabled and not entitled  
20 to benefits.

21           Among the evidence in the administrative record is  
22 a medical source statement from Dr. Ravi Ramaswami,  
23 plaintiff's treating physician, which found, among other  
24 things, that the plaintiff suffered from cervical disc  
25 disease and, as a result, was significantly limited in her

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1 functional abilities. Dr. Ramaswami found, for example,  
2 that plaintiff could walk only a half of a city block  
3 without rest or severe pain, could stand for no more than  
4 ten minutes without needing to sit down or walk around,  
5 could sit or stand for no less than two hours during an  
6 eight-hour workday, would need to frequently take  
7 unscheduled breaks from work, could never lift 10 pounds or  
8 more, would be off task 25 percent or more of the time and  
9 would likely be absent four or more days per month as a  
10 result of her limitations.

11           The ALJ's decision concluded that Dr. Ramaswami's  
12 medical source statement was entitled only to little weight.  
13 One of the plaintiff's principle arguments here is that in  
14 affording the opinion little weight, the ALJ did not  
15 properly evaluate this medical opinion. Under Social  
16 Security Administration regulations, a treating physician's  
17 opinion as to the nature and severity of the claimant's  
18 impairment is entitled to controlling weight when it is well  
19 supported by medically acceptable clinical and laboratory  
20 diagnostic techniques and is not inconsistent with other  
21 substantial evidence in the case record. However, there are  
22 situations where the treating physician's opinion is not  
23 entitled to controlling weight. In such circumstances, the  
24 Second Circuit's decision in *Greek versus Colvin* makes clear  
25 that the ALJ must explicitly consider the frequency, length,

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1 nature and extent of treatment; the amount of medical  
2 evidence supporting the opinion; the consistency of the  
3 opinion with the remaining medical evidence; and whether the  
4 physician is a specialist.

5 In this case, while recognizing that Dr. Ramaswami  
6 was a treating source, the ALJ nonetheless afforded his  
7 opinion only little weight. In doing so, however, the ALJ  
8 did not provide the type of explanation required by the  
9 regulations as explained in the relevant case law. The ALJ  
10 did generally refer to the length of this doctor's treatment  
11 of plaintiff by citing to plaintiff's treatment records.  
12 The ALJ's decision, however, involved no discussion of the  
13 frequency, nature and extent of treatment.

14 With regard to the support for Dr. Ramaswami's  
15 opinion in his own records, the ALJ made a largely  
16 conclusory finding that, quote, all the claimant's physical  
17 examinations from February of 2015 to March of 2017 were  
18 normal, unquote, and thus not consistent with the  
19 limitations suggested by her doctor. While it may be that  
20 the ALJ could have justified this conclusion with more  
21 explanation, the reasoning provided by the ALJ leaves the  
22 Court uncertain as to whether the appropriate analysis was  
23 conducted. As plaintiff points out, she was repeatedly  
24 characterized as appearing malnourished and frail during her  
25 appointments with Dr. Ramaswami. Plaintiff also presented



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1 to Dr. Ramaswami on multiple occasions with back, neck and  
2 shoulder pain. At or near the time of his medical source  
3 statement, plaintiff's doctor noted that back and neck pain  
4 was making it such that plaintiff could not stand for more  
5 than a few minutes. These findings are at least somewhat  
6 consistent with the limits imposed by Dr. Ramaswami's  
7 medical source statement.

8           The ALJ also did not offer any explanation  
9 regarding the consistency of Dr. Ramaswami's opinions with  
10 other medical evidence in the record. The failure to  
11 discuss whether this opinion was consistent with other  
12 evidence in the record is problematic because, as plaintiff  
13 points out, there was other evidence in the record  
14 consistent with Dr. Ramaswami's opinion. The ALJ, for  
15 example, recognized that an MRI revealed degenerative  
16 changes in bulging discs and stenosis. He also recognized  
17 plaintiff's treatment for back and neck pain both at the  
18 Spine Institute of Columbia Memorial Hospital and through a  
19 course of physical therapy. But the ALJ makes no reference  
20 to this evidence when articulating his ground for  
21 discounting the opinion of plaintiff's treating physician.

22           To justify affording the opinion reduced weight,  
23 defendant points out that many of Dr. Ramaswami's medical  
24 notes reveal that during his examinations of plaintiff, the  
25 doctor rarely seems to have evaluated plaintiff's

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1 musculoskeletal system. Defendant also points out that  
2 plaintiff's appointments during this time period were  
3 largely assessing plaintiff for refills of suboxone to treat  
4 her opioid addiction, not to assess pain or other medical  
5 conditions that related to the opinions provided in the  
6 medical source statement.

7 Defendant appears to be correct on both points and  
8 both may have been appropriate grounds for providing less  
9 weight to the opinion, but neither was relied upon by the  
10 ALJ as a basis for discounting Dr. Ramaswami's opinion, and  
11 courts have consistently held that defendant's  
12 after-the-fact justification for doing so is not entitled to  
13 weight. See, for example, *Snell versus Apfel*, Second  
14 Circuit decision from 1999, and *Crosse versus Colvin*, a 2014  
15 decision from the Northern District of New York.

16 Without a more thorough explanation of the ALJ's  
17 reasoning for finding the medical source statement  
18 inconsistent with the treatment notes and other evidence in  
19 the record, the Court concludes that the matter should be  
20 remanded for further consideration of the proper weight to  
21 be afforded this opinion.

22 The plaintiff makes a number of additional  
23 arguments concerning the ALJ's evaluation of the record and  
24 the RFC determination. Given that the amount of weight that  
25 might be afforded the plaintiff's treating physician on

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1 remand will necessarily have a significant impact on any  
2 further RFC finding, the Court finds that the other issues  
3 raised should be addressed by the ALJ following  
4 reconsideration of the treating physician's opinion.

5 As a result, I grant plaintiff's motion for  
6 judgment on the pleadings, deny defendant's motion and  
7 remand the matter pursuant to sentence 4 of Section 405(g)  
8 for further proceedings.

9 All right. Anything further that counsel wishes  
10 me to address before we end this conference?

11 MR. CHISHOLM: No. No, thank you, your Honor.

12 THE COURT: All right. Miss Christ, anything  
13 further?

14 MS. CHRIST: No, thank you.

15 THE COURT: All right. Thank you both. I  
16 appreciate it.

17 MS. CHRIST: Thank you.

18 MR. CHISHOLM: Thank you.

19 (This matter adjourned at 10:53 AM.)

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CERTIFICATION OF OFFICIAL REPORTER

I, THERESA J. CASAL, RPR, CRR, CSR, Official  
Realtime Court Reporter, in and for the United States  
District Court for the Northern District of New York, do  
hereby certify that pursuant to Section 753, Title 28,  
United States Code, that the foregoing is a true and correct  
transcript of the stenographically reported proceedings held  
in the above-entitled matter and that the transcript page  
format is in conformance with the regulations of the  
Judicial Conference of the United States.

Dated this 25th day of September, 2019.

/s/ THERESA J. CASAL

THERESA J. CASAL, RPR, CRR, CSR

FEDERAL OFFICIAL COURT REPORTER

**THERESA J. CASAL, RPR, CRR  
UNITED STATES DISTRICT COURT - NDNY**